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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/697,034 | 10/31/2003 | Rodolphe Lourdel | 0529-1021 | 1105 |
| 466 | 7590 | 11/10/2005 | EXAMINER | |
| YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202 | | | SWIGER III, JAMES L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3733 | |

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/697,034 | Applicant(s) LOURDEL ET AL. | |
| | Examiner James L. Swiger | Art Unit 3733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/29/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

The claims are objected to because they include reference characters which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the blocking device "19" as described in the specification on page 6, line 12. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

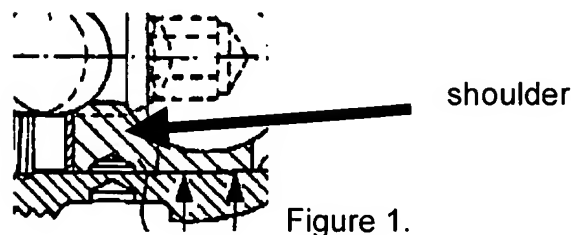
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sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Biedermann et al (U.S. Patent No. 5,672,176). Biedermann et al. discloses a device having a connector (5), a connecting rod (15), a screw having a spherical head (1) with a threaded body (2) and an external diameter greater than the spherical head (Fig. 3). Biedermann et al. further discloses a connecting element (16), vertical branches (11 and 12), a U-shaped opening (7), and a locking clip as a blocking device (20) with pressure screw (40). The connecting element has a vertical bore (in the direction of arrow F in Fig. 1). Biedermann et al. also discloses a threaded socket (13). Biedermann et al. also discloses a device where the circular and screw-threaded portions form an internal shoulder. See Fig. 1 below.



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The disclosed device also has an internal diameter of the bore smaller than the threaded portion.

Biedermann et al. finally discloses a cylindrical body with threaded screw external surface (46) with an internally opened bore (47) that can form a bearing surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biedermann et al. in view of Marnay et al. (U.S. Patent No. 5,658,285).

Biedermann et al discloses the above device except for a securing ring. Marnay et al. teaches a securing ring (20) with a collar (21). It would have been obvious to one skilled in the art at the time the invention was made to incorporate the ring of Marnay et al. into the device of Biedermann et al. to support a better closure for the screw interface.

Regarding claim 5 in view of Marnay, Biedermann et al. discloses the claimed invention except for the sizing of the dimensions of the cylindrical portion. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the external diameter of the cylindrical portion slightly smaller than the internal diameter, so the larger external diameter can create a collar. The applicant has not disclosed that such measurements solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in

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the art would find obvious for the purpose of providing a forming a collar on the cylindrical portion of the anchoring device. In re Dailey and Eilers, 149 USPQ 47 (1966). Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biedermann et al. in view of Puno et al. (U.S. Patent No. 5,360,431). Biedermann et al. discloses the above invention except for a vertebral anchoring device with a socket having two opposite slots partially cutting the length of the cylindrical body. Also, these two separate portions are connected by a bridge to set limits on the size of the opening created by the slots. Puno et al. discloses a socket with slots (51) that is capable of keeping the two portions connected at the level of the shoulder and delimiting a maximal opening. It would have been obvious to one skilled in the art at the time the invention was made to incorporate the modifications of Puno et al. with the device of Beidermann et al. to better secure the vertebral anchoring device and to impose limits on its capabilities

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892 for further reference.

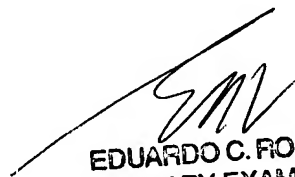
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 8:30am to 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLS



EDUARDO C. ROBERT
PRIMARY EXAMINER